

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FRANK CACCAVO,

Plaintiff,

-against-

RELIANCE STANDARD LIFE INSURANCE  
COMPANY,

Defendant.  
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KIMBA M. WOOD, United States District Judge:

On May 18, 2021, the Court granted Defendant Reliance Standard Life Insurance Company's motion for summary judgment and denied Plaintiff's cross-motion for summary judgment. (ECF No. 43.) On May 19, 2021, the Clerk of Court entered judgment in favor of Defendant. (ECF No. 44.)

On May 28, 2021, Defendant filed a motion for attorneys' fees and costs. (ECF No. 45.) On June 3, 2021, Plaintiff filed a notice of appeal of the Court's May 18, 2021 Opinion & Order. (ECF No. 48.) On June 7, 2021, in light of the pending appeal, Plaintiff filed a motion to stay all post-judgment proceedings or, in the alternative, to defer consideration of Defendant's motion for attorneys' fees. (ECF No. 49.) Defendant does not oppose staying a decision on the motion for attorneys' fees. (ECF No. 54.)

If an appeal on the merits has been taken, a district court may decide a motion for attorneys' fees, defer a ruling on the motion, or deny the motion without prejudice, directing a new period for filing after resolution of the appeal. *See Topps Co., Inc. v. Koko's Confectionary & Novelty*, 2020 WL 6082093, at \*2 (S.D.N.Y. Oct. 15, 2020) (citing Fed. R. Civ. P. 54(d)(2) Advisory Committee's Note (1993)) (Fox, M.J.). In this case, the outcome of the pending

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**ORDER**

appeal will affect Defendant's motion. For example, the motion may be rendered moot or may require amendment or supplementation. Accordingly, the most prudent course of action is to deny Defendant's motion, without prejudice to renewal after Plaintiff's appeal on the merits has been decided. *See, e.g., Gill v. Bausch & Lomb Supplemental Ret. Income Plan I*, 2014 WL 1404902, at \*1 (W.D.N.Y. Apr. 10, 2014).

### CONCLUSION

For the foregoing reasons, it is hereby ORDERED that:

1. Plaintiff's motion to stay all post-judgment proceedings, or to defer consideration of Defendant's motion for attorneys' fees, is granted insofar as the Court will not decide the merits of Defendant's motion pending resolution of Plaintiff's appeal.
2. Defendant's motion for attorneys' fees is denied without prejudice. Defendant may renew the motion within 14 days of the entry of the appellate mandate on the electronic docket sheet for this action.
3. The Clerk of Court is respectfully directed to terminate the motions at ECF Nos. 45 and 49.

SO ORDERED.

Dated: New York, New York  
June 8, 2021

/s/ Kimba M. Wood  
KIMBA M. WOOD  
United States District Judge